



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2  
290 BROADWAY  
NEW YORK, NY 10007-1866

SEP 12 2013

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**CERTIFIED MAIL RETURN RECEIPT REQUESTED**

Steven Dicarlo and Rolf Dinsmore  
Atlantic Power Corporation, Carney's Point Generating Plant  
500 Shell Road  
Carney's Point, NJ 08069-2928

RE: Atlantic Power Corporation- Section 114 Letter CAA-02-2013-1468

Dear Mr. Dicarlo and Mr. Dinsmore:

The Clean Air Act, 42 U.S.C. §§ 7401 *et seq.* (CAA or the Act), at Section 114, 42 U.S.C. § 7414 authorizes the U.S. Environmental Protection Agency (EPA) to require submittal of information to, among other things, assess compliance with the Act and regulations promulgated pursuant to the Act. This letter (Information Request) requires Atlantic Power Corporation to submit information about its Carney's Point Cogeneration Facility to demonstrate compliance with the New Source Review (Prevention of Significant Deterioration (PSD) and Non-Attainment New Source Review (NA-NSR)) permitting program, 42 U.S.C. §§ 7470-7492; 42 U.S.C. §§ 7501-7503. As used herein the term "Chambers Cogeneration, LP" refers to the subsidiary of Atlantic Power Corporation that oversees and operates the Carney's Point Cogeneration Facility.

Pursuant to Section 114 of the Act, this Information Request requires you to submit all of the information requested by EPA in Enclosure 1. Failure to submit the requested information required by this Information Request is a violation of Section 114 of the Act, and may result in an order to comply, an order for administrative penalties, or a civil action for penalties and injunction requiring compliance pursuant to EPA enforcement authority provided at Section 113(a) of the Act. See Enclosure 2. In accordance with Section 113(c)(2)(A) of the Act, any person who knowingly makes any false statement, representation, or certification in, or omits material information from or knowingly alters, conceals, or fails to file a response to this requirement is subject to criminal penalties.

You may choose to assert a business confidentiality claim covering all or part of the information submitted. You may not, however, withhold any information on that basis. In order for EPA to consider a claim of business confidentiality for one or more of the documents submitted by you, a cover sheet, stamped or typed legend, or other suitable form of notice must be placed on or attached to the document, with language such as "trade secret," "proprietary," or "company confidential." Allegedly confidential portions of non-confidential documents should be clearly



identified, and may be submitted separately to facilitate identification and handling by EPA. For each confidentiality claim, the date or occurrence of any event after which the information can be released should be indicated, if applicable. If no confidentiality claim accompanies the information received by EPA, it may be made available to the public without further notice to you. EPA will disclose information covered by a confidentiality claim only to the extent allowed by, and in accordance with, the procedures set forth in EPA's public information regulations, 40 C.F.R. §§ 2.201 et seq. (See 41 Fed. Reg. 36902 (Sept. 1, 1976)).

In order to fully comply with this Information Request, your response must include a completed Certification of Response (Attachment to Enclosure 1), notarized by a notary public, and signed by you or another officer of your company. Your responses to the questions in Enclosure 1, including all supporting documents and the Certification of Response, must be submitted to EPA in accordance with the schedule as outlined in Enclosure 1 to:

Mr. Kenneth Eng, Chief  
Air Compliance Branch  
U.S. Environmental Protection Agency  
Region 2 Office  
290 Broadway, 21st Floor  
New York, New York 10007-1866

A request for an extension of time to respond to this, or any other portion of this Information Request, must be in writing to Mr. Eng at the address above, must include the reason(s) for the delay in responding, and must include the requested subsequent date for responding. An extension of time will be effective only if granted by EPA in writing.

The response to this request shall be in accordance with the schedules as outlined in Enclosure 1. You should be aware that the schedule allows for requests of additional information, to be targeted by EPA, which would specify certain projects and time frames of concern. These requests, although they will be a modification of what is set out in Enclosure 1, will be considered part of this original request and subject to the aforementioned requirements.

Please include the above-cited Reference No. **CAA-02-2013-1468** in any and all of your response(s) to this Information Request. Further, if within one year of the date of this Information Request, you obtain information different from, or in addition to, the information provided in response to this Information Request, or if there is any change affecting the information submitted, you must notify EPA and submit the relevant information no later than thirty (30) calendar days after such information becomes available.

1. The first part of the paper is devoted to a general discussion of the problem of the existence of solutions of the system of equations (1) for arbitrary values of the parameters  $\alpha$  and  $\beta$ . It is shown that the system has solutions for arbitrary values of the parameters  $\alpha$  and  $\beta$  if and only if the condition  $\alpha + \beta = 1$  is satisfied. In this case the solutions are unique and are given by the formulas

$$x = \frac{1}{\alpha} \ln \frac{1}{1 - e^{-\alpha t}}, \quad y = \frac{1}{\beta} \ln \frac{1}{1 - e^{-\beta t}} \quad (2)$$

where  $t$  is an arbitrary positive number. It is also shown that the solutions of the system (1) are unique for arbitrary values of the parameters  $\alpha$  and  $\beta$  if and only if the condition  $\alpha + \beta = 1$  is satisfied. In this case the solutions are unique and are given by the formulas

$$x = \frac{1}{\alpha} \ln \frac{1}{1 - e^{-\alpha t}}, \quad y = \frac{1}{\beta} \ln \frac{1}{1 - e^{-\beta t}} \quad (3)$$

where  $t$  is an arbitrary positive number. It is also shown that the solutions of the system (1) are unique for arbitrary values of the parameters  $\alpha$  and  $\beta$  if and only if the condition  $\alpha + \beta = 1$  is satisfied. In this case the solutions are unique and are given by the formulas

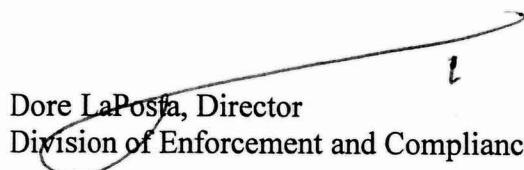
$$x = \frac{1}{\alpha} \ln \frac{1}{1 - e^{-\alpha t}}, \quad y = \frac{1}{\beta} \ln \frac{1}{1 - e^{-\beta t}} \quad (4)$$

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You may address any questions concerning this matter to Phillip Ritz in the Air Compliance Branch at [ritz.phillip@epa.gov](mailto:ritz.phillip@epa.gov) or 212-637-4064. We appreciate and look forward to your prompt response.

Sincerely yours,

Dore LaPosta, Director  
Division of Enforcement and Compliance Assistance

Enclosures:

cc: Edward Choromanski, Administrator  
Air Compliance & Enforcement, NJDEP  
P.O. Box 422  
Trenton, NJ 08625

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## **ENCLOSURE 1**

### **INFORMATION REQUEST PURSUANT TO SECTION 114 OF THE CLEAN AIR ACT**

This Information Request seeks information regarding the compliance of Carney's Point Cogeneration Facility with PSD and NA-NSR permitting program

#### **Part I: Instructions**

- A. Provide a complete and separate narrative response to each paragraph in Part III below, including but not limited to producing all documents and data requested by the paragraph. The information must be submitted in electronic format when possible. If in computer format or memory, each such document shall be provided in translation to a form useable and readable by EPA, with all necessary documentation and support. All documents in hard copy should also include attachments to or enclosures with any document.
- B. Precede each of your responses with the number of the paragraph to which it corresponds and at the end of each response identify the person(s) that provided the information that was used or considered in responding to that paragraph, as well as each person that was consulted in the preparation of that response. If you produce documents or data in response to a paragraph, label or mark those items in such a way so that EPA can determine which materials correspond to which paragraph.
- C. When a response is provided in the form of a number, specify the units of measure of the number in a precise manner.
- D. Provide responses to the best of your ability, even if the information sought was never documented in writing or if supporting documents are no longer available. Consult with all pertinent employees or other personnel in preparing your responses. If you cannot provide a precise answer to a question, please approximate but, in any such instance, state the reason for your inability to be specific.
- E. Where documents or information necessary for a response are not in your possession, custody or control, indicate in your response why such documents or information is not available or in your possession and identify any source that either possesses or is likely to possess the documents or information.

#### **Part II: Definitions**

All terms used in this Information Request will have their ordinary meaning unless such terms are defined in the Act, 42 U.S.C. § 7401, 40 C.F.R. Part 52 (which incorporates the federally-approved State Implementation Plan), and other Clean Air Act implementing regulations. Additional definitional clarification is specified below.

- A. "Begin actual construction" shall have the same meaning as defined in EPA's PSD regulations, 40 C.F.R. § 52.21(b)(11).

1. The first part of the paper is devoted to a discussion of the

- B. The term "Btu" shall mean the British Thermal Unit of heat.
- C. The term "capital appropriation requests" shall mean the documents used by the Carney's Point Cogeneration Facility personnel that serve the purpose of describing capital projects for equipment and process changes when seeking management approval for a planned expenditure at the station. These documents are also known as capital improvement requests, authorizations for expenditure, work order records, or other similar names.
- D. "Capital projects" means a monetary expenditure on depreciable equipment, including any costs to design, engineer, transport, and install said equipment. Capital projects shall include, but are not limited to, replacement of coal-fired boiler components, steam turbines and air pollution controls. For purposes of this Information Request only, capital projects shall mean only those projects whose actual or estimated cost (whichever is greater) is at least \$250,000.
- E. The term "coal-fired boiler" or "unit" shall mean all equipment used for the purpose of generating electricity including but not limited to coal handling facilities, boilers, ductwork, stacks, turbines, generators, and all ancillary equipment.
- F. The terms "document" and "documents" shall mean any object that records, stores, or presents information, and includes writings, memoranda, records, or information of any kind, formal or informal, whether wholly or partially handwritten or typed, whether in computer format, memory, or storage device, or in hardcopy, including any form or format of these.
- G. The term "Kw-hr" shall mean kilowatt hours of electrical energy.
- H. The term "Mw-hr" or "MWh" shall mean megawatt hours of electrical energy.
- I. The term "NSPS" shall mean the Standards of Performance for New Stationary Sources promulgated at 40 C.F.R. Part 60.
- J. The term "performance" shall mean capability of the coal-fired boiler to burn greater amounts of coal on an hourly or annual basis, improve availability, or achieve higher efficiency.
- K. The term "PSD/NSR" shall mean the Prevention of Significant Deterioration and the New Source Review preconstruction permitting programs established at 40 C.F.R. Parts 51 and 52 and any respective program established under a state implementation plan.
- L. As used herein the term "Chambers Cogeneration, LP" refers to the subsidiary of Atlantic Power Corporation that oversees and operates the Carney's Point Cogeneration Facility
- M. The term "steam generating unit" shall have the same meaning as defined at 40 C.F.R. § 60.41(b).





N. The terms "you" or "Chambers Cogeneration, LP" shall mean the addressee of this Information Request, the addressee's officers, partners, managers, employees, contractors, trustees, successors, predecessors, assigns, and agents.

### **Part III: Specific Information Requests**

#### **Information Request Part A**

Please provide the following information for the Carney's Point Cogeneration Facility within thirty (30) days of your receipt of this Information Request. Submit responses in electronic format where appropriate and available.

- 1) Provide a list of capital projects that are planned to begin actual construction anytime from the date of this letter to 24 months in the future at the coal-fired boilers, steam turbines, or generators at the Carney's Point Cogeneration Facility. This list should include the types of information and capital projects as outlined in Paragraph 4 below.
- 2) Provide a list of all capital projects for each coal-fired boiler at the Carney's Point Cogeneration Facility which:
  - a) have actual or authorized expenditures of \$250,000 or more; and
  - b) are projected to commence construction anytime over the next 24 months after the date of this letter.
- 3) The list should include, but is not limited to, the following information:
  - a) the work order number;
  - b) project description;
  - c) authorized expenditure;
  - d) actual and/or projected expenditure;
  - e) date of approval;
  - f) projected completion date;
  - g) projected in-service date; and
  - h) each original equipment manufacturer (OEM), equipment supplier, or contractor that provided engineering, fabrication, and/or installation services for the project.

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- 4) The list of all Capital projects needs to include:
- a) boiler casing and boiler floor/wall tube replacements;
  - b) economizer, reheater(s), primary and secondary superheaters, steam drums, and/or primary and secondary air pre-heater replacements;
  - c) induced draft (ID) fans, forced draft (FD) fans and fan motor replacements;
  - d) condenser, boiler feed pump and/or feed water heater replacements;
  - e) Flue gas recirculation (FGR) replacements, modifications, or deactivations, Pulverizer, exhausters, burner, and/or cyclone replacements, upgrades, modifications, or design changes for each unit;
  - f) balanced draft conversion projects;
  - g) turbine rotor and shell replacements or design changes, turbine efficiency upgrades, turbine upgrades to increase throttle steam flow and projects designed to make use of under-utilized turbine throttle steam flow;
  - h) low-NOx burner (LNB), overfire air, staged combustion, gas or coal reburn installation and modifications/retrofits including any model or size changes made to the burners of any unit, and including changes to the ignitors [i.e., include model and size (in million British thermal units per hour (mmBtu/hr))];
  - i) scrubber installation, retrofits and/or design change projects;
  - j) any electrostatic precipitator (ESP) or baghouse/fabric filter retrofits or design changes;
  - k) coal handling system changes to increase feed rate or other changes to coal preparation; and
  - l) changes made to equipment to accommodate the burning of fuel, other than coal, in each boiler. Such alternative fuels include, but are not limited to oil, petroleum coke, tire derived fuel and biomass.
- 5) For any capital project identified in Paragraph 4, above, that involves the replacement or partial replacement of boiler tubes, boiler walls, burners, economizers, reheaters, Pulverizers, superheaters, primary air fans, induced draft fans, steam lines, lower slope, or turbine components, provide a copy of all documents related to and including the following:
- a) all associated capital appropriation requests and approvals;
  - b) outage reports;



- c) total project cost (actual or projected), including all costs incurred by other owners and/or operators;
- d) the projected completion date;
- e) the date the unit is projected to return to commercial operation following completion of the capital project;
- f) equipment specifications;
- g) cost/benefit analyses;
- h) all alternative options analyses;
- i) a copy of all emissions calculations (actual or projected);
- j) all engineering analyses and/or performance test(s) showing original as built performance as well as the performance for the period immediately prior to the completion of the project;
- k) all evaluations conducted or planned to verify pre- and post- completion performance of the capital project under any equipment vendor guarantee;
- l) all work order and work request project completion reports, as applicable, e.g., for associated work to prepare for future projects;
- m) all associated purchase orders;
- n) state whether the capital improvement is associated with a life extension project, capacity increase, efficiency enhancement, or reliability improvement;
- o) documents related to the maximum continuous rating of the boiler, both before and after the project is completed (as applicable or projected for the future), including but not limited to documentation of changes in:
  - i) unit capacity factor;
  - ii) unit availability;
  - iii) boiler heat input;
  - iv) steam flow rate;
  - v) steam temperature;
  - vi) steam pressure;





- vii) unit heat rate;
  - viii) Btu/MWh; and
  - ix) unit efficiency.
- p) any risk analysis conducted by Chambers Cogeneration, LP or third party on its behalf, including but not limited to, average failures per year, average lost time per year, lost energy per event and consequence of failure related to the component/section of the boiler that is going to be replaced or redesigned as part of the project; and
  - q) All engineering analyses, performance tests, or related documents including those showing original as-built performance and performance for the period immediately prior to and immediately following completion of each project.

### **Information Request Part B**

Please provide the following information for the Carney's Point Cogeneration Facility within sixty (60) days. Submit responses in electronic format where appropriate and available.

- 1) Provide a list of all owners and operators of the Carney's Point Cogeneration Facility, including the percent ownership for each individual owner, for the years beginning January 1, 2003 to the present.
- 2) Capacity and Load Analyses from January 2003 to the present, including:
  - a) Load forecast evaluation;
  - b) Existing system resource evaluation (generation, purchases, sales, demand-side management (DSM) programs);
  - c) Evaluation of system operations and current operating constraints;
  - d) Capacity requirement to satisfy system reliability;
  - e) Purchase Power Evaluation;
  - f) Fuel supply planning;
  - g) Environmental compliance planning;
  - h) DSM planning;
  - i) Qualifying Facilities (QFs) impacts;



- j) Renewable portfolios;
  - k) Risk Analysis;
  - l) Load Forecasting - end-use load shapes needed particularly for DSM analyses – MetrixND, REEPS, Commend, INFORM, HELM;
  - m) Generation Resource Optimization - Strategist, System Optimizer, Electric Generation Expansion Analysis System (EGEAS);
  - n) Production Costing - Detailed production cost analysis and market price forecasting – PROMOD, PROSYM, Gentrader
    - i) Alternating Current (AC) Load Flow Analysis used in detailed transmission studies;
    - ii) Direct Current (DC) Load Flow Analysis – used in production cost modeling;
    - iii) Transmission Interface Models used in less detailed production cost models including GRID
- 3) Copies of all documents describing whether the project was associated with a life extension project, capacity increase, efficiency enhancement, or reliability improvement, and post-project performance tests and/or evaluations conducted to verify equipment guarantees.
  - 4) For each Coal-Fired Boiler at the Carney's Point Cogeneration Facility, provide original and current boiler cross-section diagrams and, if available, submit any drawings, or other documents that show the changes to any unit.
  - 5) Provide a copy of all engineering analyses, correspondence, memoranda, telephone discussion summaries, and any other communications, including but not limited to, Board of Directors reports, meeting minutes, and annual reports, that describe the benefits, provides justifications for, or otherwise explains the nature and extent, purpose, cost, and/or frequency of each capital project identified in response to Part A, Paragraph 1. This request includes all communications both before (and after, if applicable) the capital project was undertaken.
  - 6) For each Coal-Fired Boiler at the Carney's Point Cogeneration Facility from January 1, 2003 to the present provide the following information in electronic format (Excel or other comma delimited format):
    - a) Fuel quality, % Sulfur (weight), % ash, heat content on a monthly and annual basis;
    - b) Total gross and net generation mega-watt-hour (MWhr) on a monthly and annual basis;
    - c) Identify the top ten annual causes of forced outages as measured by MWhr of lost generation;



- d) Lost generation (in MWhr) on an annual basis due to forced, maintenance, or scheduled outages and curtailments, caused by:
  - i) Boiler related components;
  - ii) Turbine generator components;
  - iii) Pollution control performance;
  - iv) Balance of plant; and
  - v) Miscellaneous.
- e) Historic scheduled/planned unit retirement dates from the beginning of operation of each unit, and any changes to those dates, with an explanation for the reason of the changed date;
- f) The standard operating procedure, or equivalent document, for the performance of the capacity tests. This would include the procedures, specifications, conditions, and other parameters under which the representativeness and accuracy of the tests are determined;
- g) All results of capacity tests including the condition (e.g., valve wide open), steam flow (peak and sustained), maximum heat input capacity (based on the coal heat content), coal type;
- h) Monthly peak hourly generation in MW;
- i) Process flow diagrams;
- j) Nameplate and current capacities;
- k) Efficiencies of pollution control equipment;
- l) Monthly/Annual capacity factor;
- m) Monthly/Annual availability factor;
- n) Monthly/Annual heat input;
- o) Summary results of all stack tests for the following pollutants:
  - i) NO<sub>x</sub>;
  - ii) SO<sub>2</sub>;
  - iii) Sulfuric acid mist (SO<sub>3</sub>/H<sub>2</sub>SO<sub>4</sub>);

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- iv) PM, PM10, and PM2.5; and
  - v) Air Toxics (Pb/Hg/HCl/other toxics that are included in the applicable State Implementation Plan (SIP)
  - p) Monthly and annual emissions (lb/mmBTU and tons/year) of NO<sub>x</sub>, SO<sub>2</sub>, PM, PM10, and Air Toxics (including Pb, Hg, HCl, and any other toxics that are included in the applicable SIP). Emissions information requested includes annual emissions reports submitted to the applicable state or local regulatory agency and all data obtained from continuous emission monitors (CEM) in flue gas streams. Be sure to specify the periods, associated pollutant emissions, and the location/source of emissions data that has already been reported to the U.S. EPA (i.e., Acid Rain CEM data/reports, NSPS data/reports, etc.). Acid Rain CEM data and/or air emission reports previously submitted to EPA for compliance verification of Title IV or applicable NSPS requirements do not need to be resubmitted to satisfy this Information Request, although any known or planned changes to that data should be identified.
- 7) Provide a copy of all analyses prepared by Chambers Cogeneration, LP or by anyone else on its behalf showing, for each project identified in response to Part A, Paragraph 2 and for which Chambers Cogeneration, LP did not seek a permit or applicability determination, and provide an explanation as to why it was determined unnecessary for the project to undergo formal state and/or agency review prior to commencing the project.
  - 8) Provide a copy of all permits, permit applications, applicability determinations and non-applicability determinations, along with supporting information, obtained by Chambers Cogeneration, LP related to the projects identified in Part A, Paragraph 1. Also, provide all requests for non-applicability submitted by Chambers Cogeneration, LP to state and/or federal permit authorities as well as all responses to Chambers Cogeneration, LP from those authorities, even where no formal determination was given. Relevant documents include, but are not limited to, permit applications, correspondence, memoranda, telephone discussion summaries, and communications between Chambers Cogeneration, LP and the state and/or federal agencies related to the federal or SIP-approved PSD program, SIP-approved minor source construction permitting program, New Source Performance Standards.
  - 9) For each Coal-Fired Boiler at the Carney's Point Cogeneration Facility, provide all engineering analyses, studies, or reports containing information regarding the capability of the unit to produce steam or burn fuel, including, but not limited to, those documents containing recommendations for increasing or improving such capability (feasibility studies), from January 1, 2003 to the present.
  - 10) Provide all Generating Availability Data System (GADS) reports from January 1, 2003 to the present in electronic format (an Excel Spreadsheet or comma delimited format compatible with



personal computers running Microsoft software) for each Coal-Fired Boiler at the Carney's Point Cogeneration Facility including the following:

- a) Forced outages and curtailment (causes and MWHR lost),
  - b) Scheduled or planned outages and curtailments (causes and MWHR lost), and
  - c) Duration (hours) of all outages and curtailments.
- 11) Provide all documents that estimate coal usage and growth and load projections for the Carney's Point Cogeneration Facility (for the period of January 1, 2003, through the present). This includes, but is not limited to, simulation modeling, rate case documentation, fuel purchase planning, new unit investment planning, and other relevant correspondence, reports, and meeting minutes by or among the Carney's Point Cogeneration Facility and the public utility or service commission, Board of Directors, or other state or federal agency.
  - 12) Identify the total capital, maintenance and retirement expenditures on an annual basis made to each Electric Utility Steam Generating Unit at the Carney's Point Cogeneration Facility from January 1, 2003 to the present.
  - 13) Provide copies of property records regarding the depreciation of the unit, including the boiler components, turbine generator components and pollution control equipment.
  - 14) Provide the current "five year plan" or other appropriate document(s) that sets forth the capital changes and identifies the projected expenditures that the Carney's Point Cogeneration Facility will be making in the next five years.
  - 15) Provide all planning, meeting notes, studies, and/or project information, including, but not limited to, Board of Directors reports, meeting minutes, and annual reports, related to efforts to increase the performance and reliability of each Coal-fired Boiler at the Carney's Point Cogeneration Facility on either a short-term or annual basis for the period beginning January 1, 2003 to the present.
  - 16) Provide a copy of each quarterly excess emission report for the Carney's Point Cogeneration Facility from January 1, 2003 to the present. For each quarterly report, include the reason code for the exceedance of each appropriate averaging period for SO<sub>2</sub>, NO<sub>x</sub>, and Opacity reported to the state that the Carney's Point Cogeneration Facility considers exempt and non-exempt, and the basis for any exemption. Reports should be in an Excel spreadsheet or a comma delimited format compatible with Microsoft Windows software.
  - 17) For the projects identified in response to Part A, Paragraph 2, above, provide the FERC Property Record Accounts 311, 312, 314, and 316. If your accounting practices differ from those outlined by FERC, provide information analogous to the FERC Property Records identified above along with all supporting information.



- 18) Provide copies of the summary results pages of all stack tests for particulate matter (PM, PM10, PM2.5), sulfur dioxide (SO<sub>2</sub>), sulfuric acid mist (SO<sub>3</sub>/H<sub>2</sub>SO<sub>4</sub>), and nitrogen oxides (NO<sub>x</sub>) for the period January 1, 2003, to present for all currently active coal-fired generating units at the Carney's Point Cogeneration Facility. You may exclude the summary result for any SO<sub>2</sub> and NO<sub>x</sub> performance tests used to certify or quality assure continuous emissions monitors (CEMs) for Acid Rain.





**ATTACHMENT TO ENCLOSURE 1**

**CERTIFICATION OF RESPONSE**

State of \_\_\_\_\_:

County of \_\_\_\_\_:

I certify, under penalty of law, that I have personally examined and am familiar with the information submitted in response to the Information Request and all documents submitted with this response, and that based on my inquiry of those individuals immediately responsible for obtaining the information, I believe that the submitted information is true, accurate, and complete, and that all documents submitted with this response are complete and authentic unless otherwise indicated. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment. I am also aware that for one year from the date of the Information Request, I am under an obligation to supplement my response to the Information Request if any additional information relevant to the matters should become known or available to me.

\_\_\_\_\_  
NAME (print or type)

\_\_\_\_\_  
TITLE (print or type)

\_\_\_\_\_  
SIGNATURE

Sworn to before me this \_\_\_\_ day of \_\_\_\_\_, 2013

\_\_\_\_\_  
Notary Public



## Enclosure 2

### CAA § 113

#### § 7413.

##### (a) In general

###### (1) Order to comply with SIP

Whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated or is in violation of any requirement or prohibition of an applicable implementation plan or permit, the Administrator shall notify the person and the State in which the plan applies of such finding. At any time after the expiration of 30 days following the date on which such notice of a violation is issued, the Administrator may, without regard to the period of violation (subject to section 2462 of title 28)—

- (A) issue an order requiring such person to comply with the requirements or prohibitions of such plan or permit,
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action in accordance with subsection (b) of this section.

###### (2) State failure to enforce SIP or permit program

Whenever, on the basis of information available to the Administrator, the Administrator finds that violations of an applicable implementation plan or an approved permit program under subchapter V of this chapter are so widespread that such violations appear to result from a failure of the State in which the plan or permit program applies to enforce the plan or permit program effectively, the Administrator shall so notify the State. In the case of a permit program, the notice shall be made in accordance with subchapter V of this chapter. If the Administrator finds such failure extends beyond the 30th day after such notice (90 days in the case of such permit program), the Administrator shall give public notice of such finding. During the period beginning with such public notice and ending when such State satisfies the Administrator that it will enforce such plan or permit program (hereafter referred to in this section as "period of federally assumed enforcement"), the Administrator may enforce any requirement or prohibition of such plan or permit program with respect to any person by—

- (A) issuing an order requiring such person to comply with such requirement or prohibition,

- (B) issuing an administrative penalty order in accordance with subsection (d) of this section, or

- (C) bringing a civil action in accordance with subsection (b) of this section.

###### (3) EPA enforcement of other requirements

Except for a requirement or prohibition enforceable under the preceding provisions of this subsection, whenever, on the basis of any information available to the Administrator, the Administrator finds that any person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under those provisions or subchapters, or for the payment of any fee owed to the United States under this chapter (other than subchapter II of this chapter), the Administrator may—

- (A) issue an administrative penalty order in accordance with subsection (d) of this section,
- (B) issue an order requiring such person to comply with such requirement or prohibition,
- (C) bring a civil action in accordance with subsection (b) of this section or section 7605 of this title, or
- (D) request the Attorney General to commence a criminal action in accordance with subsection (c) of this section.

###### (4) Requirements for orders

An order issued under this subsection (other than an order relating to a violation of section 7412 of this title) shall not take effect until the person to whom it is issued has had an opportunity to confer with the Administrator concerning the alleged violation. A copy of any order issued under this subsection shall be sent to the State air pollution control agency of any State in which the violation occurs. Any order issued under this subsection shall state with reasonable specificity the nature of the violation and specify a time for compliance which the Administrator determines is reasonable, taking into account the seriousness of the violation and any good faith efforts to comply with applicable requirements. In any case in which an order under this subsection (or notice to a violator under paragraph (1)) is issued to a corporation, a copy of such order (or notice) shall be issued to

appropriate corporate officers. An order issued under this subsection shall require the person to whom it was issued to comply with the requirement as expeditiously as practicable, but in no event longer than one year after the date the order was issued, and shall be nonrenewable. No order issued under this subsection shall prevent the State or the Administrator from assessing any penalties nor otherwise affect or limit the State's or the United States authority to enforce under other provisions of this chapter, nor affect any person's obligations to comply with any section of this chapter or with a term or condition of any permit or applicable implementation plan promulgated or approved under this chapter.

**(5) Failure to comply with new source requirements**

Whenever, on the basis of any available information, the Administrator finds that a State is not acting in compliance with any requirement or prohibition of the chapter relating to the construction of new sources or the modification of existing sources, the Administrator may—

- (A) issue an order prohibiting the construction or modification of any major stationary source in any area to which such requirement applies; <sup>11</sup>
- (B) issue an administrative penalty order in accordance with subsection (d) of this section, or
- (C) bring a civil action under subsection (b) of this section.

Nothing in this subsection shall preclude the United States from commencing a criminal action under subsection (c) of this section at any time for any such violation.

**(b) Civil judicial enforcement**

The Administrator shall, as appropriate, in the case of any person that is the owner or operator of an affected source, a major emitting facility, or a major stationary source, and may, in the case of any other person, commence a civil action for a permanent or temporary injunction, or to assess and recover a civil penalty of not more than \$25,000 per day for each violation, or both, in any of the following instances:

- (1) Whenever such person has violated, or is in violation of, any requirement or prohibition of an applicable implementation plan or permit. Such an action shall be commenced
  - (A) during any period of federally assumed enforcement, or
  - (B) more than 30 days following the date of the Administrator's notification under subsection (a)(1) of this section that such

person has violated, or is in violation of, such requirement or prohibition.

- (2) Whenever such person has violated, or is in violation of, any other requirement or prohibition of this subchapter, section 7603 of this title, subchapter IV-A, subchapter V, or subchapter VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver or permit promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter).
- (3) Whenever such person attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

Any action under this subsection may be brought in the district court of the United States for the district in which the violation is alleged to have occurred, or is occurring, or in which the defendant resides, or where the defendant's principal place of business is located, and such court shall have jurisdiction to restrain such violation, to require compliance, to assess such civil penalty, to collect any fees owed the United States under this chapter (other than subchapter II of this chapter) and any noncompliance assessment and nonpayment penalty owed under section 7420 of this title, and to award any other appropriate relief. Notice of the commencement of such action shall be given to the appropriate State air pollution control agency. In the case of any action brought by the Administrator under this subsection, the court may award costs of litigation (including reasonable attorney and expert witness fees) to the party or parties against whom such action was brought if the court finds that such action was unreasonable.

**(c) Criminal penalties**

- (1) Any person who knowingly violates any requirement or prohibition of an applicable implementation plan (during any period of federally assumed enforcement or more than 30 days after having been notified under subsection (a)(1) of this section by the Administrator that such person is violating such requirement or prohibition), any order under subsection (a) of this section, requirement or prohibition of section 7411 (e) of this title (relating to new source performance standards), section 7412 of this title, section 7414 of this title (relating to inspections, etc.), section 7429 of this title (relating to solid waste combustion), section 7475 (a) of this title (relating to

preconstruction requirements), an order under section 7477 of this title (relating to preconstruction requirements), an order under section 7603 of this title (relating to emergency orders), section 7661a (a) or 7661b (c) of this title (relating to permits), or any requirement or prohibition of subchapter IV-A of this chapter (relating to acid deposition control), or subchapter VI of this chapter (relating to stratospheric ozone control), including a requirement of any rule, order, waiver, or permit promulgated or approved under such sections or subchapters, and including any requirement for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter) shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not to exceed 5 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(2) Any person who knowingly—

- (A) makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters, conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained (whether with respect to the requirements imposed by the Administrator or by a State);
- (B) fails to notify or report as required under this chapter; or
- (C) falsifies, tampers with, renders inaccurate, or fails to install any monitoring device or method required to be maintained or followed under this chapter <sup>[2]</sup>

shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 2 years, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(3) Any person who knowingly fails to pay any fee owed the United States under this subchapter, subchapter III, IV-A, V, or VI of this chapter shall, upon conviction, be punished by a fine pursuant to title 18 or by imprisonment for not more than 1 year, or

both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(4) Any person who negligently releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who at the time negligently places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment for not more than 1 year, or both. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment.

(5)

(A) Any person who knowingly releases into the ambient air any hazardous air pollutant listed pursuant to section 7412 of this title or any extremely hazardous substance listed pursuant to section 11002 (a)(2) of this title that is not listed in section 7412 of this title, and who knows at the time that he thereby places another person in imminent danger of death or serious bodily injury shall, upon conviction, be punished by a fine under title 18 or by imprisonment of not more than 15 years, or both. Any person committing such violation which is an organization shall, upon conviction under this paragraph, be subject to a fine of not more than \$1,000,000 for each violation. If a conviction of any person under this paragraph is for a violation committed after a first conviction of such person under this paragraph, the maximum punishment shall be doubled with respect to both the fine and imprisonment. For any air pollutant for which the Administrator has set an emissions standard or for any source for which a permit has been issued under subchapter V of this chapter, a release of such pollutant in accordance with that standard or permit shall not constitute a violation of this paragraph or paragraph (4).

(B) In determining whether a defendant who is an individual knew that the violation

placed another person in imminent danger of death or serious bodily injury—

- (i) the defendant is responsible only for actual awareness or actual belief possessed; and
- (ii) knowledge possessed by a person other than the defendant, but not by the defendant, may not be attributed to the defendant;

except that in proving a defendant's possession of actual knowledge, circumstantial evidence may be used, including evidence that the defendant took affirmative steps to be shielded from relevant information.

- (C) It is an affirmative defense to a prosecution that the conduct charged was freely consented to by the person endangered and that the danger and conduct charged were reasonably foreseeable hazards of—

- (i) an occupation, a business, or a profession; or
- (ii) medical treatment or medical or scientific experimentation conducted by professionally approved methods and such other person had been made aware of the risks involved prior to giving consent.

The defendant may establish an affirmative defense under this subparagraph by a preponderance of the evidence.

- (D) All general defenses, affirmative defenses, and bars to prosecution that may apply with respect to other Federal criminal offenses may apply under subparagraph (A) of this paragraph and shall be determined by the courts of the United States according to the principles of common law as they may be interpreted in the light of reason and experience. Concepts of justification and excuse applicable under this section may be developed in the light of reason and experience.

- (E) The term "organization" means a legal entity, other than a government, established or organized for any purpose, and such term includes a corporation, company, association, firm, partnership, joint stock company, foundation, institution, trust, society, union, or any other association of persons.

- (F) The term "serious bodily injury" means bodily injury which involves a substantial risk of death, unconsciousness, extreme physical pain, protracted and obvious disfigurement or protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

- (6) For the purpose of this subsection, the term "person" includes, in addition to the entities referred to in section 7602 (e) of this title, any responsible corporate officer.

**(d) Administrative assessment of civil penalties**

- (1) The Administrator may issue an administrative order against any person assessing a civil administrative penalty of up to \$25,000, per day of violation, whenever, on the basis of any available information, the Administrator finds that such person—

- (A) has violated or is violating any requirement or prohibition of an applicable implementation plan (such order shall be issued

- (i) during any period of federally assumed enforcement, or

- (ii) more than thirty days following the date of the Administrator's notification under subsection (a)(1) of this section of a finding that such person has violated or is violating such requirement or prohibition); or

- (B) has violated or is violating any other requirement or prohibition of this subchapter or subchapter III, IV-A, V, or VI of this chapter, including, but not limited to, a requirement or prohibition of any rule, order, waiver, permit, or plan promulgated, issued, or approved under this chapter, or for the payment of any fee owed the United States under this chapter (other than subchapter II of this chapter); or

- (C) attempts to construct or modify a major stationary source in any area with respect to which a finding under subsection (a)(5) of this section has been made.

The Administrator's authority under this paragraph shall be limited to matters where the total penalty sought does not exceed \$200,000 and the first alleged date of violation occurred no more than 12 months prior to the initiation of the administrative action, except where the Administrator and the Attorney General jointly determine that a matter involving a larger penalty amount or longer period of violation is appropriate for administrative penalty action.



Any such determination by the Administrator and the Attorney General shall not be subject to judicial review.

(2)

(A) An administrative penalty assessed under paragraph (1) shall be assessed by the Administrator by an order made after opportunity for a hearing on the record in accordance with sections 554 and 556 of title 5. The Administrator shall issue reasonable rules for discovery and other procedures for hearings under this paragraph. Before issuing such an order, the Administrator shall give written notice to the person to be assessed an administrative penalty of the Administrator's proposal to issue such order and provide such person an opportunity to request such a hearing on the order, within 30 days of the date the notice is received by such person.

(B) The Administrator may compromise, modify, or remit, with or without conditions, any administrative penalty which may be imposed under this subsection.

(3) The Administrator may implement, after consultation with the Attorney General and the States, a field citation program through regulations establishing appropriate minor violations for which field citations assessing civil penalties not to exceed \$5,000 per day of violation may be issued by officers or employees designated by the Administrator. Any person to whom a field citation is assessed may, within a reasonable time as prescribed by the Administrator through regulation, elect to pay the penalty assessment or to request a hearing on the field citation. If a request for a hearing is not made within the time specified in the regulation, the penalty assessment in the field citation shall be final. Such hearing shall not be subject to section 554 or 556 of title 5, but shall provide a reasonable opportunity to be heard and to present evidence. Payment of a civil penalty required by a field citation shall not be a defense to further enforcement by the United States or a State to correct a violation, or to assess the statutory maximum penalty pursuant to other authorities in the chapter, if the violation continues.

(4) Any person against whom a civil penalty is assessed under paragraph (3) of this subsection or to whom an administrative penalty order is issued under paragraph (1) of

this subsection may seek review of such assessment in the United States District Court for the District of Columbia or for the district in which the violation is alleged to have occurred, in which such person resides, or where such person's principal place of business is located, by filing in such court within 30 days following the date the administrative penalty order becomes final under paragraph (2), the assessment becomes final under paragraph (3), or a final decision following a hearing under paragraph (3) is rendered, and by simultaneously sending a copy of the filing by certified mail to the Administrator and the Attorney General. Within 30 days thereafter, the Administrator shall file in such court a certified copy, or certified index, as appropriate, of the record on which the administrative penalty order or assessment was issued. Such court shall not set aside or remand such order or assessment unless there is not substantial evidence in the record, taken as a whole, to support the finding of a violation or unless the order or penalty assessment constitutes an abuse of discretion. Such order or penalty assessment shall not be subject to review by any court except as provided in this paragraph. In any such proceedings, the United States may seek to recover civil penalties ordered or assessed under this section.

(5) If any person fails to pay an assessment of a civil penalty or fails to comply with an administrative penalty order—

(A) after the order or assessment has become final, or

(B) after a court in an action brought under paragraph (4) has entered a final judgment in favor of the Administrator,

the Administrator shall request the Attorney General to bring a civil action in an appropriate district court to enforce the order or to recover the amount ordered or assessed (plus interest at rates established pursuant to section 6621 (a)(2) of title 26 from the date of the final order or decision or the date of the final judgment, as the case may be). In such an action, the validity, amount, and appropriateness of such order or assessment shall not be subject to review. Any person who fails to pay on a timely basis a civil penalty ordered or assessed under this section shall be required to pay, in addition to such penalty and interest, the United States enforcement expenses, including but not limited to

attorneys fees and costs incurred by the United States for collection proceedings and a quarterly nonpayment penalty for each quarter during which such failure to pay persists. Such nonpayment penalty shall be 10 percent of the aggregate amount of such person's outstanding penalties and nonpayment penalties accrued as of the beginning of such quarter.

**(e) Penalty assessment criteria**

- (1) In determining the amount of any penalty to be assessed under this section or section 7604 (a) of this title, the Administrator or the court, as appropriate, shall take into consideration (in addition to such other factors as justice may require) the size of the business, the economic impact of the penalty on the business, the violator's full compliance history and good faith efforts to comply, the duration of the violation as established by any credible evidence (including evidence other than the applicable test method), payment by the violator of penalties previously assessed for the same violation, the economic benefit of noncompliance, and the seriousness of the violation. The court shall not assess penalties for noncompliance with administrative subpoenas under section 7607 (a) of this title, or actions under section 7414 of this title, where the violator had sufficient cause to violate or fail or refuse to comply with such subpoena or action.
- (2) A penalty may be assessed for each day of violation. For purposes of determining the number of days of violation for which a penalty may be assessed under subsection (b) or (d)(1) of this section, or section 7604 (a) of this title, or an assessment may be made under section 7420 of this title, where the Administrator or an air pollution control agency has notified the source of the violation, and the plaintiff makes a prima facie showing that the conduct or events giving rise to the violation are likely to have continued or recurred past the date of notice, the days of violation shall be presumed to include the date of such notice and each and every day thereafter until the violator establishes that continuous compliance has been achieved, except to the extent that the violator can prove by a preponderance of the evidence that there were intervening days during which no violation occurred or that the violation was not continuing in nature.

**(f) Awards**

The Administrator may pay an award, not to exceed \$10,000, to any person who furnishes information or services which lead to a criminal conviction or a judicial or administrative civil penalty for any violation of this subchapter or subchapter III, IV-A, V, or VI of this chapter enforced under this section. Such payment is subject to available appropriations for such purposes as provided in annual appropriation Acts. Any officer,<sup>[3]</sup> or employee of the United States or any State or local government who furnishes information or renders service in the performance of an official duty is ineligible for payment under this subsection. The Administrator may, by regulation, prescribe additional criteria for eligibility for such an award.

**(g) Settlements; public participation**

At least 30 days before a consent order or settlement agreement of any kind under this chapter to which the United States is a party (other than enforcement actions under this section, section 7420 of this title, or subchapter II of this chapter, whether or not involving civil or criminal penalties, or judgments subject to Department of Justice policy on public participation) is final or filed with a court, the Administrator shall provide a reasonable opportunity by notice in the Federal Register to persons who are not named as parties or intervenors to the action or matter to comment in writing. The Administrator or the Attorney General, as appropriate, shall promptly consider any such written comments and may withdraw or withhold his consent to the proposed order or agreement if the comments disclose facts or considerations which indicate that such consent is inappropriate, improper, inadequate, or inconsistent with the requirements of this chapter. Nothing in this subsection shall apply to civil or criminal penalties under this chapter.

**(h) Operator**

For purposes of the provisions of this section and section 7420 of this title, the term "operator", as used in such provisions, shall include any person who is senior management personnel or a corporate officer. Except in the case of knowing and willful violations, such term shall not include any person who is a stationary engineer or technician responsible for the operation, maintenance, repair, or monitoring of equipment and facilities and who often has supervisory and training duties but who is not senior management personnel or a corporate officer. Except in the case of knowing and willful violations, for purposes of subsection (c)(4) of this section, the term "a person" shall not include an employee who is carrying out his normal activities and who is not a part of senior management personnel or a



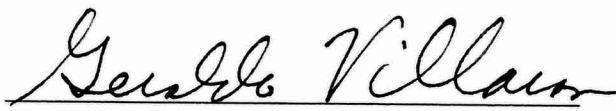
corporate officer. Except in the case of knowing and willful violations, for purposes of paragraphs (1), (2), (3), and (5) of subsection (c) of this section the term "a person" shall not include an employee who is carrying out his normal activities and who is acting under orders from the employer.



**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY THAT ON **September 12, 2013**, I MAILED A TRUE COPY OF THE ATTACHED DOCUMENT BY **CERTIFIED MAIL-RETURN RECEIPT** REQUESTED, **ARTICLE NUMBERS 7005-3110-0000-5947-4235** POSTAGE PRE-PAID, UPON THE FOLLOWING PERSON(S):

**Steven Dicarlo & Rolf Dinsmore  
Atlantic Power Corporation, Carney's Point Generating Plant  
500 Shell Road  
Carney's Point, New Jersey 08069-2928**

  
**Geraldo Villaran**

